IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

ELDON STEELE,
Petitioner,

vs.

THE STATE OF NORTH CAROLINA,
Respondent.

No. 1118

BRIEF OF THE STATE OF NORTH CAROLINA RESPONDENT, OPPOSING PETITION FOR WRIT OF CERTIORARI

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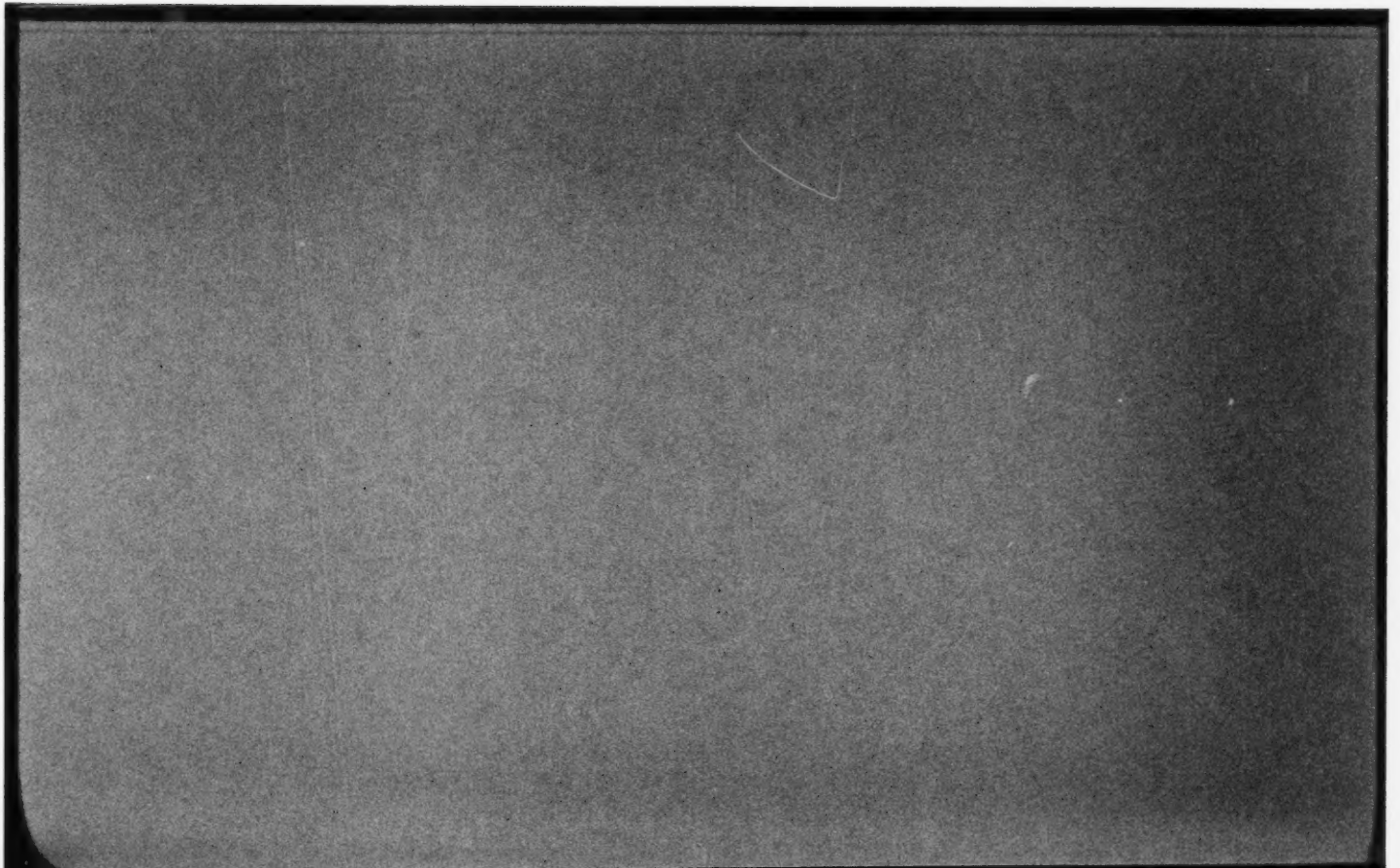

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Statement Of The Case

The petitioner, Eldon Steele, seeks by writ of *certiorari* to have this Court review the decision of the Supreme Court of North Carolina reversing a judgment rendered in the Superior Court of Bladen County, North Carolina, discharging the petitioner on writ of *habeas corpus*, he being then in prison serving a term for public drunkenness and disorderly conduct. The decision of the Supreme Court of North Carolina is reported as IN THE MATTER OF ELDON STEELE, 220 N. C. 445, and was filed January 7, 1942.

Facts

The petitioner, Eldon Steele, after having pleaded guilty (R. 7) to a charge of public drunkenness and disorderly conduct before John H. Yates, a justice of the peace in Richmond County, North Carolina, was sentenced by the said justice of the peace to a term of thirty days on the roads, suspended upon payment of the costs, amounting to $8.35. (R. 7). The petitioner failing to pay the costs, it was ordered that the sentence be placed into effect on April 14, 1941. (R. 7 and 8).

The petitioner was assigned to work the roads under the State Highway and Public Works Commission, as provided by law, and was taken into custody for this purpose by the Commission. Before the expiration of his sentence, the petitioner filed with His Honor, Luther Hamilton, a Judge of the Superior Court, a petition for writ of *habeas corpus*. (R. 9). The writ was issued by Judge Hamilton (R. 11), and, in consequence of proceedings before him, an order or judgment was rendered at the April Term, 1941, of the Superior Court of Bladen County, North Carolina, discharging the petitioner. (R. 12 and 13).

The reasons assigned for the discharge of the petitioner were that the proceedings and judgment in Richmond County before John H. Yates, Justice of the Peace, were unconstitutional and void, the Court being of the opinion that the said justice of the peace was disqualified by reason of his interest in the fees which would accrue to him in the event of a conviction and that the judgment rendered under the circumstances was violative of the due process clause or the Fourteenth Amendment to the Constitution of the United States and Article I, Section 17, of the Constitution of North Carolina, which provides that no person ought to be deprived of his liberty but by the law of the land.

Costs in criminal proceedings before justices of the peace in Richmond County, North Carolina, are regulated by North Carolina Public-Local Laws of 1933, Chapter 342, as amended by North Carolina Public-Local Laws of 1935, Chapter 358. Provision is made for a fee of two dollars to be taxed against

a defendant for the benefit of the justice of the peace when there is a conviction. If the defendant is imprisoned for nonpayment of costs, the county is required to pay one-half the fees provided in the statute. However, no provision is made for compensation of justices of the peace in case a defendant is acquitted.

On June 9, 1941, Harry McMullan, Attorney General of the State of North Carolina, filed with the Supreme Court of North Carolina a petition for writ of *certiorari* to have the judgment, order, and other proceedings in the case of STATE v. ELDON STEELE removed to the Supreme Court of North Carolina in order that the judgment or order discharging and releasing the prisoner might be reviewed. (R. 2). The petition for writ of *certiorari* was allowed September 25, 1941. (R. 6). In an opinion filed January 7, 1942, the Supreme Court of North Carolina held that the petitioner had been lawfully imprisoned and reversed the judgment of the Superior Court discharging him upon writ of *habeas corpus*. (R. 14).

Argument

The State of North Carolina contends that the writ of *certiorari* ought not to be allowed. By seeking a writ of *certiorari*, the petitioner appeals to the discretion of the Supreme Court, but the Court in its discretion does not review decisions of state courts unless substantial federal questions are presented on the record and must necessarily be decided in disposing of the case. The constitutional questions which the petitioner seeks to have determined in this Court are abstract questions not presented by the record, and his claim that the decision of the Supreme Court of North Carolina deprived him of his liberty without due process of law is palpably unfounded. Under the circumstances it is not appropriate to grant a writ of *certiorari*.

I

THE CONSTITUTIONALITY OF THE PROCEDURE FOR DETERMINING THE GUILT OR INNOCENCE OF DEFENDANTS IN COURTS OF JUSTICES OF THE PEACE IN RICHMOND COUNTY IS A MOOT QUESTION, THE PETITIONER HAVING PLEADED GUILTY.

A fact of greatest importance in considering this petition is that the petitioner pleaded guilty (R. 7) to the charge against him in the court of John H. Yates, Justice of the Peace, in Richmond County, North Carolina.

The burden of his petition is that proceedings in the magistrate's court deprived him of his liberty without due process of law, that the justice of the peace was disqualified because of pecuniary interest in fees which accrued to him in case of conviction, that because of his disqualification his judgment was void under the Constitution of the United States, and, therefore, that the decision of the Supreme Court of North Carolina ought to be reversed.

The petitioner asserts that, inasmuch as the statute regulating fees of justices of the peace in Richmond County,

North Carolina, (North Carolina Public-Local Laws of 1933, Chapter 342, as amended by North Carolina Public-Local Laws of 1935, Chapter 358) affords compensation to the justices in criminal cases only when defendants are convicted, such justices are tempted to forget the burden of proof required to convict a defendant. Whatever the effect of the alleged pecuniary interest of the justice of the peace may be in a case in which the resulting bias of the justice can affect his judgment, this system of compensation presents no constitutional question when he is not called upon to decide questions of fact.

The petitioner by pleading guilty to a charge of public drunkenness and disorderly conduct confessed his guilt in open court and waived the benefit of every statutory and constitutional safeguard designed to insure an impartial judicial determination of his guilt or innocence. In effect, he was not convicted by the justice of the peace; he convicted himself. The alleged disqualification of the justice of the peace is a disqualification which is operative only when his alleged pecuniary interest may affect his official action. When the petitioner pleaded guilty, the only action required of the justice was the rendition of judgment. No judgment he might have pronounced could have possibly affected his right to the compensation or the amount of such compensation.

The facts of this record being such that the fee system of which petitioner complains could not have influenced the judgment, no constitutional question is presented. Questions as to the constitutionality of procedure before justices of the peace when a defendant pleads not guilty and issues of fact must be determined are purely abstract and hypothetical, and are not presented by this petition.

It is not the function of this Court to decide moot questions.

Lord v. Veazie, 8 How. 251, 12 L. ed. 1067;

Little v. Bowers, 134 U. S. 547, 10 Sup. Ct. 620, 33 L. ed. 1016;

Castillo v. McConnico, 168 U. S. 674, 18 Sup. Ct. 229, 42

L. ed. 622;

McCain v. Des Moines, 174 U. S. 158, 19 Sup. Ct. 639, 43 L. ed. 932;

Muskrat v. United States, 219 U. S. 346, 31 Sup. Ct. 250, 55 L. ed. 246.

Nor will constitutional questions be decided when not presented by the record and it is not necessary for the disposition of the case.

Charles River Bridge v. Warren Bridge, 11 Pet. 420, 9 L. ed. 773;

Baker v. Grice, 169 U. S. 284, 18 Sup. Ct. 323, 42 L. ed. 748;

Arkansas Louisiana Gas Co. v. Department of Public Utilities, 304 U. S. 61, 58 Sup. Ct. 770, 82 L. ed. 1149.

II

THE ATTACK ON THE CONSTITUTIONALITY OF CRIMINAL PROCEEDINGS BEFORE JUSTICES OF THE PEACE IN RICHMOND COUNTY WOULD BE PALPABLY UNFOUNDED, EVEN IF THE CONSTITUTIONAL QUESTIONS AROSE UPON THIS RECORD.

Even if the petitioner had pleaded not guilty, so that constitutional objections to the fee system of compensating justices of the peace in Richmond County, North Carolina, could arise upon this record, these constitutional objections would be palpably unfounded and not sufficient to justify review of the decision of the North Carolina Supreme Court by this Court.

The contention that a trial for a minor criminal offense before a justice of the peace in Richmond County, North Carolina, denies due process of law is based upon the case of *Tumey v. Ohio*, 273 U. S. 210, 47 Sup. Ct. 437, 67 L. ed. 969. In that case it was held that an Ohio mayor, because of his pecuniary interest in fees which were dependent upon conviction, was disqualified to try criminal cases, that a trial before him was violative of the Fourteenth Amendment, and that a sentence imposed by him was void. However, criminal

procedure before justices of the peace in Richmond County and elsewhere in North Carolina may be readily distinguished from the type of procedure condemned in the *Tumey* Case.

The amount of the fee received by the mayor in the *Tumey* Case in the event of conviction was much larger than that received by a justice of the peace in Richmond County, North Carolina. The mayor personally received $12.00, and one-half of any fine imposed was paid into the treasury of the city of which he was an officer. Under Public-Local Laws of 1933, Chapter 342, a justice's fee in Richmond County is only $2.00.

In the opinion in the *Tumey* Case, it is recognized that a system in which an inferior court judge is paid for his services only when he convicts does not violate the requirement of due process of law if "the costs usually imposed are so small that they may be properly ignored as within the maxim de minimis non curat lex." 273 U. S. 510, 531. The fee of $2.00 in Richmond County is so small in comparison to the fee involved in the *Tumey* Case that it may well come within the *de minimis* rule.

An important element which influenced the Court in the *Tumey* Case was the fact that one-half the fine assessed against a convicted defendant was to be paid into the municipal treasury. The mayor, as the chief officer of the municipality, had both a personal and official interest in building up the treasury. No such influence is operative in Richmond County, for under Article IX, Section 5, of the North Carolina Constitution the clear proceeds of all fines must be paid into the county school fund.

In the *Tumey* Case the accused had no right to a trial by jury before the mayor. In North Carolina, however, a trial by jury before a justice of the peace is available if requested. *N. C. Code Ann.* (Michie, 1939), Sec. 4627. A defendant is privileged also to have the case removed to another justice if dissatisfied with the one first assuming jurisdiction. *N. C. Code Ann.* (Michie, 1939), Sec. 1498.

The foregoing differences between procedure before a

justice of the peace in Richmond County and procedure before the Ohio mayor are important. However, the most important difference and the one which makes the authority of *Tumey v. Ohio* entirely irrelevant and uncontrolling in the instant case is the difference in the nature of the appeal allowed by law from the decision of the two officers. In the *Tumey* Case the mayor's decision on questions of fact was final. There was no appeal except upon matters of law and legal inference. However, in North Carolina, a defendant convicted of a criminal offense before a justice of the peace may appeal to the Superior Court, where he is entitled to a trial *de novo* on questions of fact and law. *N. C. Code Ann.* (Michie, 1939), Sec. 4647. This is a right guaranteed by Article IV, Section 27, of the North Carolina Constitution.

The validity of a system of criminal procedure should be determined by considering the system as a whole. The fact that there is a possibility of abuse at some particular stage of the procedure should not invalidate the whole and render void a criminal judgment if an efficient and practical method of correction is afforded subsequently. If it be conceded that the fee system in North Carolina tends to prevent some justices of the peace from being impartial in criminal cases, nevertheless, the right of appeal and trial *de novo* in the superior court is a complete and sufficient safeguard against injustices which may occasionally arise. If by utilizing the system of criminal procedure as a whole and invoking all of the remedies provided by law for his protection a defendant may obtain a fair and impartial determination of the issue of his guilt or innocence, the requirements of due process and the law of the land are satisfied. That is the doctrine of the United States Supreme Court, for in *Frank v. Mangum*, 237 U. S. 309, 328, 35 Sup. Ct. 582, 587, 59 L. ed. 969, 980, Justice Pitney, speaking of the due process clause, says:

> "The prohibition is addressed to the State; if it be violated, it makes no difference in a court of the United States by what agency of the state this is done; so, if a violation be threatened by one agency of the state, but

prevented by another agency of higher authority, there is no violation by the state."

Although the United States Supreme Court and the Supreme Court of North Carolina have not directly passed upon the question, it has been quite generally held by other tribunals that the right to a trial *de novo* on appeal eliminates possible constitutional objections to trials before magistrates where fees are dependent upon conviction.

In *Ex Parte Meeks*, 20 F. (2d) 543 (W. D. Ky.), the petitioner had been convicted of violating the state prohibition law before a county court judge in Kentucky. His sentence included the payment of a $100 fine and a term in prison. The petitioner asked to be released on writ of *habeas corpus* on the grounds that the trial judge had a pecuniary interest in the case, being entitled to ten per cent of the fine, that the proceedings violated due process, and under *Tumey v. Ohio* the sentence was void. The court denied the relief requested on the ground that, inasmuch as the petitioner could under Kentucky law appeal and be tried *de novo* in a court where no such pecuniary interest would exist, the procedure in the state courts afforded due process of law, and *Tumey v. Ohio* was distinguishable. The Court said, at page 544:

"As was pointed out by the Supreme Court in the case of *Frank v. Mangum*, 237 U. S. 309, 35 S. Ct. 582, 59 L. ed. 969, the question involved, when it is sought by habeas corpus proceedings to release the petitioner from confinement under a judgment of the state court, is whether he has been denied due process of law by the state, and that is determined, not merely by the result in one judicial tribunal of the state, but the whole procedure open to him under the state law must be examined, for the purpose of determining if the state law has furnished the means by which the wrong done in one tribunal may be corrected in another."

In *Hill v. State*, 174 Ark. 886, 298 S. W. 321, the defendant had been convicted in a mayor's court before a jury, of assault and battery. He appealed to the circuit court, where

he was again convicted after a trial *de novo*. Appealing to the Supreme Court, his contention was that his conviction should not stand, for under the due process clause the mayor's court in which the proceedings began was without jurisdiction, the mayor, officers of the court, and the jury being interested in the outcome on account of the fee system. The conviction was affirmed on the ground that the provision for trial *de novo* in the circuit court satisfied the requirements of due process, the court observing that:

> "The appellant contends that the mayor had no jurisdiction on the ground that he and the jury and the officers had a pecuniary interest in convicting the defendant. To sustain this contention, appellant relies upon the decision of the United States Supreme Court in the case of *Tumey v. Ohio*, 47 S. Ct. 437, 71 L. ed. 749. This case has no application to the facts of this record, for the reason that the statutes of Ohio, which were reviewed by the Supreme Court of the United States, are entirely different from the statutes of our own state. The statutes of Ohio under consideration by the Supreme Court of the United States did not grant the defendant convicted before the mayor's court the right of appeal to a higher court where a trial *de novo* was to be had in the higher court."

In *State v. Schelton*, 205 Ind. 416, 186 N. E. 772, it was held that the procedure before justices of the peace in Indiana did not on account of the fee system deny due process to a criminal defendant. Summarizing the provisions designed for the protection of a defendant, the Court said:

> "The law of Indiana as applicable to a trial before a justice of the peace provides for a change of venue (Section 2100, Burns' 1926) from the justice of the peace and also from the township. It also gives the defendant a right to trial by jury. The fees are small and not sufficient to justify the fear that the justice of the peace would be influenced to convict in order to receive his fees. And if the defendant entertains such fears he has the right to

call for a jury, and also to a change of venue from the justice. He is safeguarded on every hand. If convicted either by the justice or jury, he has the right to an appeal to the circuit court and there try his case *de novo* either before the judge or jury."

It was concluded that the procedure before justices of the peace in Indiana was distinguishable from the procedure condemned in *Tumey v. Ohio.* The *Schelton* Case was followed in *Cole v. Wherly,* 206 Ind. 461, 190 N. E. 56, and *Harding v. Minos,* 206 Ind. 661, 190 N. E. 862.

The defendant in *Hitt v. State,* 149 Miss. 718, 115 So. 879, was convicted in the court of a justice of the peace in Mississippi of a violation of the prohibition laws. He appealed to the circuit court and thence to the supreme court, insisting that the trial in the justice's court was a denial of due process since the justice received no fees for acquittals and, therefore, his motion to quash the affidavit upon which he was tried should have been allowed. The court held that the conviction was valid. It was of the opinion that an allowance of $60 per year in lieu of fees in cases in which defendants were acquitted kept justices of the peace from having a pecuniary interest in criminal cases, although they did receive fees in case of conviction. However, the court held that, even if it were conceded that the procedure in the justice's court would be objectionable if there were no provision for appeal, the fact that the defendant has a right upon appeal to a trial *de novo* saved the system from constitutional objections.

Similarly, in *State v. Gonzales,* 43 N. M. 498, 95 P. (2d) 673, the right to a trial *de novo* on appeal was held to preserve the constitutionality of criminal proceedings before a justice of the peace who was paid fees only in the event of conviction. The Court said:

"If we gave no further latitude to appellant's claim of error than he does himself, viz: a denial of due process under the federal constitution, U. S. C. A. Const. Amend. 14, it would be a sufficient answer to say that whatever

> the fact in regard to pecuniary interest of the justice of the peace in his costs, the appellant thereafter had a trial *de novo* before a District Judge free from this interest. This would meet the requirements of due process. In other words, the federal constitution does not afford a guaranty of due process twice in the same case any more than our constitution guarantees to [two] jury trials in the same case."

In *Ex Parte Lewis*, 47 Okla. Cr. 72, 288 Pac. 354, the validity of a sentence imposed by a justice of the peace in Oklahoma was assailed. The Court held that the sentence was valid and that procedure in the justice's court was distinguishable from that involved in the *Tumey* Case upon the ground *inter alia* that the right of appeal eliminated possible objections. The Court said:

> "In the *Tumey* case the defendant had no right or opportunity for retrial, and his right to appeal was confined to questions of law presented by a bill of exceptions to the appellate court. The question of whether there was any evidence upon which the conviction was based was particularly denied him. In the case at bar, the defendant had a right of appeal, first to the proper court of the county in which he was first tried, and thereafter to the criminal court of appeals to determine if he was legally convicted by competent evidence. Section 3000, C. O. S. 1921."

The defendant in *Brooks v. Town of Potomac*, 149 Va. 427, 141 S. E. 249, was convicted of a traffic violation in a mayor's court. The mayor received only half fees in case of acquittal, but the defendant had the right to appeal and secure a trial *de novo* in the circuit court. The Supreme Court of Appeals held that this procedure was according to due process of law. After discussing differences between conditions involved in the *Tumey* Case and those existing in Virginia, the Court said:

> "As already appears, none of these conditions existed in the instant case. Brooks was granted an appeal to the

circuit court for the asking, where, after waiving a trial by jury, his case was reheard *de novo* by an unbiased and disinterested judge, who weighed the evidence and applied the law to the facts, and rendered a decision in accordance therewith.

The *Tumey* case is not controlling here."

The Supreme Court of North Carolina in the case of *In The Matter of Eldon Steele*, 220 N. C. 685, which the petitioner seeks to have reviewed, recognized the authority of *Tumey v. Ohio*. However, it was found that the facts of this case and the procedure involved were so different from that condemned in Ohio that the *Tumey* Case was not in point. Chief Justice Stacy said at p. 688 (R. 17):

"The facts in the instant case are quite different from those appearing in the *Tumey Case, supra*. Here, the defendant, whithout any preliminary challenge, entered a plea of guilty. He did not demand a jury trial, as he might have done. C. S., 4627. Nor did he ask the justice of the peace to hold the balance 'nice, clear and true' between him and the State. Even so, he still had the right to appeal to the Superior Court of the county. *S v. Warren*, 113 N. C., 683, 18 S. E., 498. Had he entered a plea of not guilty, or if he did not feel justified in entering a plea of traverse, had he remained silent, he could have appealed from the judgment entered and the whole matter would have been heard in the Superior Court *de novo*. *S v. Koonce*, 108 N. C., 752, 12 S. E., 1032. 'In all cases of appeal,' from the sentence of the justice to the Superior Court of the county, 'the trial shall be anew, without prejudice from the former proceedings.' C. S., 4647. Those facts take the present case out of the doctrine announced in the *Tumey Case, supra*, and the authorities so hold. *Brooks v. Town of Potomac*, 149 Va., 427, 141 S. E., 249; *Tari v. State*, 117 Ohio St., 481, 159 N. E., 594, 57 A. L. R., 284, and cases cited."

III

THERE IS NO CONFLICT IN THE DECISIONS OF THE FEDERAL COURTS AS TO THE CONSTITUTIONALITY OF A TRIAL BEFORE A MAGISTRATE WHOSE FEES DEPEND UPON CONVICTION, WHEN THERE IS A RIGHT TO A TRIAL DE NOVO ON APPEAL.

It is suggested by petitioner that the petition for writ of *certiorari* ought to be allowed in order that a conflict in the decisions of the federal courts as to the effect of a right to a trial *de novo* on appeal from a judicial officer having a pecuniary interest in the disposition of the case before him may be resolved. Upon examination of the decisions of the federal courts, no such conflict will be found to exist.

In *Frank v. Mangum*, 237 U. S. 309, 35 Sup. Ct. 582, 59 L. ed. 969, the United States Supreme Court held that the constitutionality of judicial procedure in the courts of a state must be determined by considering the system as a whole rather than piecemeal, that if a violation of due process is threatened by one agency of the State, but prevented by another agency of higher authority, there is no violation by the state. This decision is in accord with the decisions cited which hold that the right of trial *de novo* on appeal eliminates constitutional objections to procedure in magistrates' courts where the magistrates' fees depend upon conviction.

In *Bevan v. Krieger*, 289 U. S. 459, 53 Sup. Ct. 661, 77 L. ed. 1316, the Supreme Court was called upon to determine the validity of the restraint of a witness who, when subpoenaed to give a deposition, had refused to give testimony before a notary public in Ohio and had been imprisoned for contempt by the notary. It was contended that the proceedings amounted to a denial of due process because the notary had a pecuniary interest in compelling the witness to testify, the amount of his compensation for taking depositions depending upon the length of the testimony. The Ohio statutes, however, provided that a person committed for contempt might, upon application to a judge, have a complete judicial review of his commitment. The Supreme Court of the United

States held that, as commitment by the notary was subject to review and, therefore, lacked the finality of the judgment in the *Tumey* Case, there was no denial of due process.

Ex Parte Meeks, 20 F. (2d) 543 (W. D. Ky.), discussed *supra*, held that the right to a trial *de novo* upon appeal eliminated possible constitutional objections to procedure in an inferior criminal court in which the judge was alleged to have a pecuniary interest in convictions.

The petitioner cites the cases of *Ex Parte Baer*, 20 F. (2d) 912 (E. D. Ky.), and *Ex Parte Hatem*, 38 F. (2d) 226 (C. C. A. 6th), as being in conflict with the foregoing decisions. *Ex Parte Baer*, although concerned with Kentucky procedure as is *Ex Parte Meeks*, involved proceedings in the quarterly court of Fleming County, whereas the *Meeks* Case was concerned with proceedings in a county court. It did not appear that there was any right to a trial *de novo* on appeal from the quarterly court. Nor did it appear that there was a right to a trial *de novo* on appeal from the judgement complained of in *Ex parte Hatem*.

Conclusion

The petitioner, Eldon Steele, by pleading guilty has admitted the charge against him. Having been sentenced upon his own confession in open court, he is not now in a position to attack the constitutionality of the procedure for determining questions of fact in the courts of Richmond County, North Carolina. Even if he had not pleaded guilty, the clear import of the decisions of the United States Supreme Court, the lower federal courts, and the State courts is that, by virtue of the right to a trial *de novo* on appeal and other statutory safe-guards, procedure such as that before justices of the peace in Richmond County is not violative of due

process. The writ of *certiorari*, therefore, should not be allowed.

Respectfully submitted,

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